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January 19, 2018

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Ms. Deborah Grinnage-Pulley
Executive Director, Juvenile Services Education System
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: XXXXX
Reference: #18-058

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE, DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On December 15, 2017, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Maryland State Department of Education Juvenile Services Education System (JSES) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The JSES did not ensure that the student was consistently provided with special education services in the placement required by the Individualized Education Program (IEP) while he was placed by the Maryland Department of Juvenile Services (DJS) at the XXXXXXXXXXXXXXXXXXXX (XXX) from January 9, 2017 to April 3, 2017, in accordance with 34 CFR §§300.2, .101, .149, and .323.

2. The JSES did not ensure that the student was provided with special education services in the placement required by the IEP while he was placed by the DJS at the XXXXX XXXXXXXXXXXX (XXX) from April 3, 2017, 2017 to August 2017, in accordance with 34 CFR §§300.2, .101, .149, and .323.
3. The JSES did not ensure that the student was provided with the opportunity to earn credit and progress through the general curriculum in science, social studies, and math while he was placed by the DJS at the XXX from July 5, 207 until August 2017, in accordance with 34 CFR §§300.2, .101, .149, and COMAR 13A.03.02.03 and 13A.05.11.03.

BACKGROUND:

The student is eighteen (18) years old, is identified as a student with an Emotional Disability under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

From January 7, 2017 to April 2, 2017, the DJS placed the student at the XXX. From April 3, 2017 to August 11, 2017, the DJS placed the student at the XXX.

FINDINGS OF FACTS:

1. The IEP in effect when the student was placed at the XXX, which was developed by the Anne Arundel County Public Schools (AACPS IEP) required the provision of twenty (20) hours of special education instruction in a separate special education classroom for all “core content classes” and one hour per week of special education instruction in the general education classroom in “mainstream classes.” The IEP states that the student required instruction outside of the general education classroom due to his need for additional supports to address his behavioral needs. The IEP states that the student has difficulty maintaining attention and frequently walks out of class without permission due to frustration with task demands.
2. On February 1, 2017, the case manager reported that the student was not making sufficient progress towards achievement of the goal to improve written language and that the teacher “noted seeing a drastic change in behavior” of the student.
3. On March 1, 2017, the IEP team convened. Although the IEP team documented that the student continued to struggle with compliance, refused to do classwork, and walked out of class without permission when frustrated, it increased the amount of special education instruction to be provided in the general education classroom to one (1) hour and fifteen (15) minutes of instruction per week without explanation.
4. The progress reports made for the student at the XXX reflect that the teachers making the reports were teachers who were assigned to provide instruction in the general education classroom and not the teachers assigned to provide instruction outside of the general

education classroom. The school does not have sufficient staffing for a general education teacher to provide services outside of the general education classroom for all of the periods during which the student is required to receive special education instruction in that setting and simultaneously provide instruction in the general education setting.

5. The XXX class schedule reflects that two (2) teachers assigned to provide instruction outside of the general education classroom were assigned to provide instruction at the same time to students assigned to the XXXXXXXX (XXX).¹ This schedule was revised during the “summer session” with the JSES hiring substitute teachers to work at the school through additional funding provided by the MSDE, DSE/EIS.
6. On April 3, 2017, the student was placed by the DJS at the XXX. Upon his placement at the XXX, the student was enrolled in English 11, algebra II, government, environmental science, career research development I, and office systems management I classes, which he had been taking at the XXX.
7. There is documentation that the student was assigned to the separate special education classroom at the XXX. A log of students provided with instruction in a separate special education classroom contains sporadic notations of the class periods during which instruction was provided in that setting. However, it does not reflect that the student was provided with instruction in that setting for each required class period.
8. On June 8, 2017, the complainant asked the JSES if it planned to continue to provide instruction in credit bearing courses for the remainder of the school year. The JSES responded that it was offering only credit recovery and humanities and STEM² enrichment courses during its “summer session” from July 5, 2017 through August 29, 2017.
9. On June 26, 2017, the complainant requested that the school system continue to provide instruction in credit bearing courses during the “summer session” in order to ensure the provision of a comprehensive program for the required 220 school days per year, and the JSES agreed to do so.
10. On June 29, 2017, the JSES informed its school principals that instruction was to be provided to enable credit completion in courses in which students are passing as well as

¹ The XXX is a dedicated cottage that is a separate living unit where more a more intensive level of care is provided to those youth displaying special mental health and significant behavioral problems. It is designed to provide short-term intensive interventions to assist the youth in being able to successfully return to the general population.

² STEM refers to science, technology, engineering, and math (www.ed.gov).

credit recovery during the “summer session.” The principals were directed not to enroll students in courses for original credits during the summer session since they would not have enough time to begin a new course, complete all course content, and demonstrate mastery of the material during that time period. Students who were not eligible for course completion or course recovery were to be provided with enrichment activities to ensure the provision of six (6) hours of instruction per day. Non-credit bearing courses in which instruction is provided were not to be reported on “summer session” progress reports, but were to be reported on the Student Record Card 7 (SR 7).

11. The student’s report card for the period ending June 23, 2017 reflects that, by that date, he earned one (1) credit in English 11, one (1) credit in algebra II, one (1) credit in environmental science, and one (1) credit in world history. It also reflects that the student was passing one (1) of the two (2) career technology education courses he was taking.
12. Reports of the student’s progress towards achievement of the annual IEP goals, which were made on June 23, 2017, reflect that, at that time, the student was making sufficient progress towards achievement of the annual IEP goals. By that time, the student was reported to be “an enthusiastic learner” who “shows perseverance on challenging assignments.”
13. From July 5, 2017 through August 29, 2017, the JSES continued to provide a six (6) hour school day. The student was provided with enrichment activities in English, math, and history. The student was also provided with continued instruction in the two (2) career technology education classes during the “summer session.” However, the “summer session” progress report erroneously reflected that the student was completing algebra II and was starting English 12 and modern world history.
14. The “summer session” progress report also reflects that the providers of special education instruction in English, math, and social studies were special education teachers during the “summer session.” The progress reports issued prior to the “summer session” reflect that the providers of special education instruction were general education teachers.
15. The XXX does not have sufficient staffing for a general education teacher to provide services outside of the general education classroom for all of the periods during which the student is required to receive special education instruction in that setting and simultaneously provide instruction in the general education setting. In addition, there is no documentation that there has been sufficient staffing for teachers to provide instruction outside of the general education classroom and the XXX¹ when needed. Efforts were made to recruit substitute teachers at the XXX, but they were unsuccessful.
16. The reports of the student’s progress towards achievement of the annual IEP goals, which were made on August 11, 2017, reflect that the student was staying focused, completing

assignments in a timely manner, continued to make sufficient progress, and had achieved the math goal.

17. The XXX did not offer social studies in the general education classroom setting during the “summer session,” because the teacher was assigned to teach career technology education courses. However, the student’s “summer session” progress report documents that the student was provided with instruction by special education teachers for English, math, and social studies so he was able to receive instruction in that area during the “summer session.”
18. Science instruction was not provided at the XXX because the science teacher, who did not hold certification in math, was assigned to provide instruction in math as a result of a math teacher vacancy.
19. There is documentation that the JSES began recruitment for the vacant math teacher position at the XXX without delay, and that this position was filled on October 25, 2017. There is documentation that the JSES has also hired a human resource staff member and that ongoing recruitment efforts are made to fill vacant positions at the JSES schools.
20. While the student’s three year re-evaluation was due to be completed by February 20, 2017, the IEP team did not meet for this purpose until August 7, 2017. The documentation of the meeting reflects that the IEP team decided that no additional data was needed to determine that the student continues to meet the criteria for identification as a student with a disability under the IDEA and to update his present levels of performance. The team discussed that the student had earned twenty-three (23) out of the twenty-six (26) credits needed for graduation, that he had earned seventy-five (75) service learning hours, and passed the high school assessment in biology. The team also considered teacher reports that at that time, the student was not demonstrating “any behavior of concern,” and that “for the most part,” he was “on task, followed staff direction and completed daily assignments.”
21. On August 24, 2017, the IEP team met and considered information that the student had made sufficient progress despite the delay in completion of the re-evaluation and that he did not require the provision of special education instruction outside of the general education classroom throughout the school day. Based on this information, the team decided that the violation did not negatively impact the student’s ability to benefit from his education program.
22. On January 17, 2018, the MSDE issued a Letter of Findings reporting the results of an investigation of the allegation that the JSES did not ensure that students were provided with the opportunity to earn credit and progress through the general curriculum during the “summer session.” As a result of that investigation, this office found that, while the JSES offered credit bearing courses for the required 220 school days per year, it did not

ensure that decisions made about the courses to be offered were consistently based on student needs and the guidance it had provided to its schools. The MSDE further found that the JSES had identified students who may have been impacted by the violation and was taking corrective action. This office required system-based corrective action to ensure that the violation does not recur, to be completed by May 1, 2018 (State complaint #18-045).

23. On January 18, 2018, the MSDE issued a Letter of Findings reporting the results of an investigation of the allegation that the XXX did not have sufficient staffing to ensure the consistent provision of special education instruction outside of the general education setting and in the XXX simultaneously (State complaint #18-047). As a result of that investigation, a violation was identified and school-based corrective action was required with respect to the violation. In addition, a violation was identified with respect to the documentation of courses taken by students during the “summer session,” and corrective action was required.

DISCUSSION/CONCLUSIONS:

Allegation #1 Provision of Special Education Instruction Outside of the General Education Classroom at the XXX

Based on the Findings of Facts #1, #4, and #5, the MSDE finds that there is no documentation that the student was consistently provided with special education instruction in core courses outside of the general education classroom, and that there was insufficient staffing to ensure the consistent provision of such services, in accordance with 34 CFR §§.2, .101, .149, and .323. Therefore, this office finds that a violation occurred.

Based on the Findings of Facts #1 - #3, the MSDE further finds that there is no documentation that the IEP team’s decision to increase the amount of time that the student received special education instruction in the general education classroom was based on the student’s needs, in accordance with 34 CFR §.324, and that a violation occurred.

Notwithstanding the violations, based on the Findings of Facts #11, #12, and #16 - #21, the MSDE finds that the student was able to make sufficient progress towards achievement of the annual IEP goals and through the general curriculum, and that appropriate steps have been taken to increase staffing at the XXX. Therefore, this office does not require corrective action in order to remediate the violations.

Allegation #2 Provision of Special Education Instruction Outside of the General Education Classroom at the XXX

Based on the Findings of Facts #6, #7, and #13, the MSDE finds that there is no documentation that the student was consistently provided with special education instruction in core courses outside of the general education classroom, in accordance with 34 CFR §§.2, .101, .149, and .323. Therefore, this office finds that a violation occurred.

Notwithstanding the violations, based on the Findings of Facts #11, #12, and #16, #21, and #23, the MSDE finds that the student was able to make sufficient progress towards achievement of the annual IEP goals and through the general curriculum and that school-based corrective action has been required to address the staff shortage at the XXX. Therefore, this office does not require corrective action in order to remediate the violation.

Allegation #3 Opportunity to Earn Credit During the “Summer Session”

Based on the Findings of Facts #8 - #13, and #20, the MSDE finds that, while the JSES offered credit bearing courses for the required 220 days per year, it did not ensure that decisions made about the courses to be offered were consistently based on student needs and the guidance it had provided to its schools, in accordance with 34 CFR §§.2, .101, .149, and COMAR 13A.05.11. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #6, #11 - #16, #20, and #22, the MSDE finds that the violation did not impact the student’s ability to continue to receive instruction in credit bearing courses and to progress through the general curriculum, and that system-wide corrective action has been required to ensure that the violation does not recur. Therefore, this office does not require corrective action to remediate the violation.

Based on the Finding of Fact #23, the MSDE finds that the MSDE has already required the completion of corrective action at the XXX with respect to documentation of courses taken. Therefore, no correction action is required to address the violation related to documentation of the courses taken during the “summer session.”

CORRECTIVE ACTION/TIMELINE:

The MSDE requires that the JSES provide documentation by June 1, 2018 of the steps taken to ensure that re-evaluations are completed within required timelines at the XXX.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Dr. Nancy Birenbaum, MSDE. Dr. Birenbaum may be contacted at (410) 767-0255.

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Please be advised that the complainant and the JSES have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the JSES must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings of facts, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The student's parents and the JSES maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/am

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